

United States Patent and Trademark Office

UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,410	02/07/2002	Udo Bickers	514413-3911	1061
7:	590 07/22/2002			
William S Frommer Frommer Lawrence & Haug 745 Fifth Avenue			EXAMINER	
			PRYOR, ALTON NATHANIEL	
New York, NY 10151			ART UNIT	PAPER NUMBER
			1616 DATE MAIL ED: 07/22/2002	7

Please find below and/or attached an Office communication concerning this application or proceeding.

olicant(s)

Office Action Summary

Application No. 10/049,410

Applicant(s)

Bickers et al

Examiner

Alton Pryor

Art Unit 1616



	The MAILING DATE of this communication appears	on the cover sheet with the correspondence address	
	for Reply		
	ORTENED STATUTORY PERIOD FOR REPLY IS SET	TO EXPIRE3 MONTH(S) FROM	
	MAILING DATE OF THIS COMMUNICATION.	no event, however, may a reply be timely filed after SIX (6) MONTHS from the	
mailing	date of this communication.		
	period for reply specified above is less than thirty (30) days, a reply within the period for reply is specified above, the maximum statutory period will apply a	e statutory minimum of thirty (30) days will be considered timely. nd will expire SIX (6) MONTHS from the mailing date of this communication.	
	to reply within the set or extended period for reply will, by statute, cause this ply received by the Office later than three months after the mailing date of t		
•	patent term adjustment. See 37 CFR 1.704(b).		
Status			
1)[💢	Responsive to communication(s) filed on Feb 7, 20	02	
2a) 🗌	This action is FINAL . 2b) 💢 This act	ion is non-final.	
3) 🗆	Since this application is in condition for allowance e closed in accordance with the practice under Ex part	except for formal matters, prosecution as to the merits is rte Quayle, 1935 C.D. 11; 453 O.G. 213.	
Disposi	tion of Claims		
4) 💢	Claim(s) <u>1-13</u>	is/are pending in the application.	
4	a) Of the above, claim(s)	is/are withdrawn from consideration.	
5) 🗆	Claim(s)	is/are allowed.	
6) 💢	Claim(s) 1-13	is/are rejected.	
7) 🗆	Claim(s)	is/are objected to.	
8) 🗆	Claims	are subject to restriction and/or election requirement.	
Applica	ition Papers		
9) 🗆	The specification is objected to by the Examiner.		
10)	The drawing(s) filed on is/are	a) \square accepted or b) \square objected to by the Examiner.	
	Applicant may not request that any objection to the d	rawing(s) be held in abeyance. See 37 CFR 1.85(a).	
11)	The proposed drawing correction filed on	is: a) \square approved b) \square disapproved by the Examiner.	
	If approved, corrected drawings are required in reply t	to this Office action.	
12)	The oath or declaration is objected to by the Exami	ner.	
Priority	under 35 U.S.C. §§ 119 and 120		
13)💢	Acknowledgement is made of a claim for foreign pro-	iority under 35 U.S.C. § 119(a)-(d) or (f).	
a) [☐ All b)☐ Some* c)☒ None of:		
	1. X Certified copies of the priority documents hav	e been received.	
	2. \square Certified copies of the priority documents hav	e been received in Application No	
	3. Copies of the certified copies of the priority de application from the International Bure	au (PCT Rule 17.2(a)).	
_	ee the attached detailed Office action for a list of the		
_	Acknowledgement is made of a claim for domestic		
	☐ The translation of the foreign language provisiona	·	
15)∐	Acknowledgement is made of a claim for domestic	priority under 35 U.S.C. §§ 120 and/or 121.	
Attachm		4) []	
_	tice of References Cited (PTO-892)	4) Interview Summary (PTO-413) Paper No(s).	
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6) Other:			
o≀ X ıw	offination Disclosure Statement(s) (PTO-1443) Paper No(s),	o/ Other:	

Claim Objections under 35 CFR 1.75

Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 6 refers to claims 1-5 as process claims rather than composition claims.

Claims 4-8,13 are objected to under 37 CFR 1.75© as being in improper form because a multiple dependent claim cannot depend from any other multiple dependent claim. See MPEP § 608.01(n).

Claim Rejections under 35 U.S.C. 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 contains the trademark/trade name Genapol LRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe an additive

Application/Control Number: 10049410 Page 2

Art Unit: 1616

and, accordingly, the identification/description is indefinite.

3. Claims 10-12 provide for the use of the herbicidal composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 10-12 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejection under 35 U.S.C. 103(a)

- 4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
- 5. Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masayuki et al (EP 204146; 12/10/86) and Langley et al (JP 58113101; 7/5/83). Masayuki teaches a herbicidal composition comprising glyphosate, glufosinate, and ammonium sulfate. See abstract, page 6 1st full paragraph, claim 1. Masayuki does not teach or suggest the composition comprising

Art Unit: 1616

polyglycol. However, Langley teaches a herbicidal composition comprising polyglycol and glyphosate. See abstract. It would have been obvious to one having ordinary skill in the art to combine the prior art teachings to arrive at the instant composition comprising polyglycol, glyphosate, glufosinate, and ammonium sulfate. One would have been motivated to do this since both prior art references individually teach herbicidal compositions.

Telephonic Inquiry

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Alton Pryor

Primary Examiner, AU 1616

May May

6/28/02